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Gardner

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OGC Has Reviewed

22 September 1995

MEMORANDUM FOR: Chief, Contract Personnel Division

SUBJECT: Civil Service Retirement Coverage for Contract Employees

REFERENCE: Memorandum for OGC from Chief, CPO, subject as above, dated 1 September 1995

1. Your memorandum states that the Office of Personnel has been verbally advised by a representative of the legal staff of the Civil Service Retirement Division that the Agency should provide Civil Service retirement coverage to CIA contract employees who are hired without a break in service after employment in a position subject to the Act. You state that it has been your understanding that the "no break in service" rule found in R 5-15 of the Federal Personnel Manual had applicability only to appointed positions.

2. This Office has also interpreted the "no break in service" rule to apply only to appointed positions since the language of the R 5-15 specifically refers to "appointment to his present position". Elsewhere in the same regulation it would appear evident that the Civil Service Commission is speaking in technical terms when it refers to "appointment". Under the exclusion section "employees and consultants paid on a contract or fee basis" are specifically cited as exempt from the Civil Service Retirement Act by Executive Order. However, at R 5-15, the regulation states:

"Any employee who is given retirement status does not lose such status if the type of appointment is changed, but continues subject to the Retirement Act by continuity of service. Accordingly, the agency may not, by changing the appointment or otherwise, divest the employee of retirement coverage so long as he remains continuously in service."

Although it would not appear to follow from the referent sentence, the words "or otherwise" in the second sentence may form the basis for advice given by the Civil Service Retirement Division.

3. We think that you should not change your present practices based on oral advice given by the Civil Service Retirement Division; however, we do recommend, since the Civil Service Commission has

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the authority to make the final determination of eligibility, that they be quoted in writing on this point. He will be pleased to assist in the preparation of such a letter.

25X1A

[Redacted]
Office of General Counsel

OCC:MLZ:ms

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